IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FIFTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO.10703 of 2004

Between:

M/s. Bumi Hiway (India) Limited,

Near ZPPH School, Mulapadu - 521 456,
Krishna District, rep. by its Accounts Executive &

Authorised Signatory, Mr. M.B. Gupta. **..... PETITIONER**

AND

1.The Assistant Commissioner (CT)

Intelligence No.IV, Vijayawada Division,Vijayawada.
2.The Appellate Deputy Commissioner (CT), Vijayawada.
3.The Commercial Tax Officer, Nandigama, Krishna District.
4.The HDFC Bank Limited, Opp: M & M Shopping Complex,
M.G. Raod, Vijayawada - 10.
5.The HDFC Bank Limited, 12, DLF Shopping Mall,

DFL Phase-1, Gurgaon, Haryana.
6.M/s. Swarna Toolway Private Limited,Road No.72,

Plot No.85, Prashasan Nagar,Jubilee Hills, Hyderabad - 500 034.
7.M/s. National High way Authority of India,Opp: Road No.2,

Executive Club,Upstairs of State Bank of Hyderabad,

Gurunanak Colony, Vijayawada - 520 008. **.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari or any other appropriate writ or order or direction quashing the notices dated 18-6-2004 issued by the 1st Respondent under Section 17 of the Act to Respondents 4,5,6 & 7 and direct the 1st Respondent to pass orders on the rectification petition dated 22-6-2004 filed by the petitioner and also restrain the 1st Respondent from taking any coercive steps for recovery of disputed taxes of Rs. 2,32,14,634/- and Rs. 16,57,897/- pursuant to his orders dated 18-5-2004 for the assessment years 2001-02 to 2003-04 till disposal of the appeal/stay applications by the 2nd Respondent.

Counsel for the Petitioner: MR.P.SRINIVASA REDDY
Counsel for the Respondent Nos.1 to 3: GP FOR COMMERCIAL TAXES

The Court made the following :

ORDER: (PER SRI BN, J)

By this writ petition the garnishee notice issued by the Assistant Commissioner has been challenged on the ground that no tax is due from the petitioner and a demand has been raised for Rs.2,48,72,531/-.

According to the petitioner, he has paid more than Rs.1,44,00,000/-, which has not been given credit whereas there is no other liability on the part of the petitioner to pay any tax. It is an admitted fact that an assessment has been made and the garnishee notice is consequent to the assessment. It is submitted at the bar that an appeal has been filed which is pending before the Appellate authority. We have also seen the memo of appeal in which a specific ground has been taken that the petitioner has paid more than one crore of rupees which has not been accounted for, while making the assessment. Obviously, these questions will have to be gone into by the appellate authority. Since the appeal is pending, it would not be appropriate to allow the petitioner to pursue two remedies at the same time. Petitioner has also prayed that an application for rectification is pending before the first respondent. If there is such an application, that may be considered by the first respondent in accordance with law.

Writ petition is accordingly disposed of. No costs.

15-07-2004

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Copy to:

1.The Assistant Commissioner (CT)

Intelligence No.IV, Vijayawada Division,

Vijayawada.

2.The Appellate Deputy Commissioner (CT),

Vijayawada.

3.The Commercial Tax Officer,

Nandigama, Krishna District.
4.The HDFC Bank Limited,

Opp: M & M Shopping Complex,
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6.M/s. Swarna Toolway Private Limited,

Road No.72, Plot No.85, Prashasan Nagar,

Jubilee Hills, Hyderabad - 500 034.
7.M/s. National High way Authority of India,

Opp: Road No.2, Executive Club,

Upstairs of State Bank of Hyderabad,

Gurunanak Colony, Vijayawada - 520 008.

8.Two CCs to the G.P. for Commercial Taxes,

High Court Buildings, Hyderabad (O.U.T)

9.Two C.D copies.